

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

1953

July 23

Mr. Leonard S. Hill
Business Supervisor
State House
Concord, New Hampshire

Dear Sir:

1. You have requested an opinion from this office relative to an interpretation of R.L., c. 90-A as amended by c. 253 of the Laws of 1953.

2. The language and sentence construction used by the legislature in section 13 of chapter 90-A as amended, indicates that the manifest policy of the State of New Hampshire is that all major state projects shall be built by the contract method. Excepted from this policy, are, among other things, maintenance and betterments on fixed plants or buildings, the estimated cost of which is \$5,000 or less. This exception relates to the policy outlined above and thereby provides for maintenance and betterment projects under \$5,000 to be performed without the necessity of contracting for the work desired. In addition to this, paragraph 2 of the said section 13 provides that no state contract construction exceeding \$1,000 for any individual project shall be awarded except by competitive bid and in conformance with the procedures as outlined in the section.

3. The sum and substance of these two paragraphs read together can mean only one thing. Maintenance and betterment projects, the estimated cost of which is \$5,000 or less, are not considered to be "major state projects" and the institutions or agencies may perform such projects by using their own labor and facilities. If, however, the institutions and agencies are unable or do not desire to handle these projects in this manner but wish to hire independent contractors then the provisions of paragraph 2 must be followed and the contracts, if over \$1,000 must be by competitive bid and processed through the Public Works and Highways Department.

Mr. Leonard S. Hill

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July 28, 1953

With the above in mind the answers to your first five questions are as follows:

1. Yes, if the contract exceeds \$1,000.
2. Yes.
3. No.
4. No. See section 14, paragraph 2 as amended.
5. Yes.

There is also It should be noted that the answers to these questions depend upon the interpretation of section 13 as previously outlined. This imposes the added restriction on institutions and agencies that as the law is now written any project over \$5,000 may not be performed by the use of institutional labor and facilities. ³ The use of independent consultants under your question number 5 is permitted on the basis that any contract for such assistance is a contract for personal services and does not come under the provisions of this act. It is further noted that such a contract in the ordinary course of events would not exceed \$1,000 on any project which in itself was not to exceed \$5,000.

You have also asked for an opinion on proper procedures applicable to projects costing \$10,000 or less and projects costing over \$25,000 as to force account construction and use of independent consultants. I do not feel that it is the duty of this department to instruct as to procedural methods. If you are in doubt as to the legality of any procedural method employed under the provisions of the laws of this state I would be happy to review such procedures with an effort to determine their legality.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General

AEB, Jr/2